

ARTICLE 29
BOARD OF ZONING APPEALS

29-1 General Provisions

- A board consisting of five (5) members shall be appointed by the Circuit Court of Fauquier County. The Board shall serve without pay other than for traveling expenses. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
- The term of office shall be for five (5) years. One of the five (5) appointed members shall be an active member of the Planning Commission.
- Members may be removed for cause by the appointing authority upon written charges and after a public hearing.
- Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- The Board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.
- For the conduct of any hearing and the taking of any action, a quorum shall be not less than three (3) members of the Board.

29-2 Powers and Duties. The Board of Zoning Appeals shall have the following powers and duties:

- To hear and decide on applications for special exceptions upon which the Board is specifically authorized to pass under this Ordinance.
- To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Article or of any ordinance pursuant thereto.
- To hear and decide applications for the interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing as required by Section 15.1-431 of the Code of Virginia, as amended,

the Board may interpret the map in such a way as to carry out the intent and purpose of the Ordinance for the particular section or district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by this Ordinance.

- To hear and decide applications for such special exceptions as may be authorized in this Ordinance. The Board may impose such conditions relating to the use provided for in the authorized special exceptions for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. No such special exception may be granted except after notice and hearing as provided in Section 15.1-431 of the Code of Virginia, as amended.
- To authorize upon appeal in specific cases such variance from the terms of the Ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice done.

29-3 Variances

- When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance.
- No such variance shall be authorized by the Board unless it finds:
 - That the strict application of the Ordinance would produce undue hardship;

- That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance. No such variance shall be authorized except after notice and hearing as required by Section 15.1-431 of the Code of Virginia 1950, as amended; and
- That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance. In authorizing a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest.

29-3.1 Variances Within the Floodway District.

- In addition to the Provisions of Section 29-3, the Board of Zoning Appeals shall consider variances from the regulations of the Flood Plain District under the guidelines outlined in Article 21.

29-4 Unauthorized Variances

- No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
- No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
- No variance shall be authorized that would relate to nonconforming uses.
- No variance shall be authorized that would reduce the amount of off-street parking space required by Article 24.
- No variance shall be authorized that would relate to signs.

- No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics, that are set forth as the basis for the application for a variance, which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.
- No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.

29-5 Special Exceptions

In order to provide for adjustments in the relative locations of uses and buildings of the same or different classifications, to promote the usefulness of these regulations as instruments for fact finding, interpretation, application, and adjustment, and to supply the necessary elasticity to their efficient operation, special exceptions and, limited as to location and especially in locations described in this Article, special use and yard exceptions are permitted by the terms of these regulations. In considering an application for a special exception, the Board shall give due regard to the specific guides and standards of this Section and in general to the nature and condition of adjacent uses and structures, and the probable effect upon them of the proposed exception. It shall also take into account the special characteristics, design, location, construction, method of operation, effect on traffic conditions, or any other aspects of the particular use or structure that may be proposed by the applicant. If it should find, after the hearing, that the proposed establishment or use will not adversely affect the health, safety, or welfare of persons residing or working on the premises or in the neighborhood, will not unreasonably impair an adequate supply of light and air to adjacent property, nor increase congestion in the streets, nor increase public danger from fire or otherwise unreasonably affect public safety, nor impair the character of the district or adjacent districts, nor be incompatible with the general plans and objectives of the official Comprehensive Plan of the Town of Warrenton, nor be likely to reduce or impair the value of buildings or property in surrounding areas, but that such establishment or use will be in substantial accordance with the general purpose and objectives of this Ordinance, the Board shall grant the exception and authorize the issuance, of a special exception permit. In those instances where the Board finds that the proposed use may be likely to have an adverse effect as above, the Board shall determine whether such effect can be avoided by the imposition of any special

requirements or conditions with respect to location, design, construction, equipment, maintenance, or operation, in addition to those expressly stipulated in this Ordinance.

The following buildings and uses are permitted as special exceptions under the terms and conditions specified above:

Special Use Exceptions

- A garage or other building accessory to a single-family dwelling which building does not comply with the regulations of the district in which it is located.
- Extension of a nonconforming use in a building so as to increase floor area by not more than twenty-five (25) percent.
- Restoration, repair, or replacement of a nonconforming activity destroyed or damaged by more than fifty (50) percent or a nonconforming structure destroyed or damaged by more than seventy-five (75) percent of the cost of restoration of the activity or structure.
- Temporary uses and structures in any district not specifically listed in the regulations and determined by the Board to be in the public interest for the district in which located, provided that such uses be of a temporary nature and do not involve the erection of substantial buildings. Such use or structure shall be authorized by the issuance of a temporary and revocable permit for not more than a twenty-four (24) month period subject to such conditions as will safeguard the public health, safety, and welfare.
- An accessory dwelling unit in a single-family dwelling or in an accessory building in an R-15 or R-10 Residential District, provided that either the main dwelling or the accessory dwelling unit be occupied by the owner of the property, that the accessory dwelling unit shall not exceed twenty-five (25) percent of the total floor area of the main dwelling nor contain less than five hundred (500) square feet of floor area, that the general appearance of a single-family dwelling shall be maintained, that no exterior stairways to a second floor be constructed at the front or side of the main building, and that at least three (3) off-street parking spaces are available on the property for use by the owner-occupant and the tenant.

Special Yard Exceptions

- An exception in the yard regulations on a lot where on the adjacent lot, there is a front, side, or rear yard that does not conform with such yard regulations in a way similar to the exception applied for, but not to encroach upon an existing or proposed right-of-way.
- An exception in the depth of a rear yard on a lot, in a block where there are nonconforming rear yards.
- An exception where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two (2) intersecting streets, so that any one of the existing depths shall for a building hereafter constructed or extended be the required minimum front yard depth.
- Construction of a single-family dwelling with reduced yard spaces on a legal nonconforming lot.

29-6 Rules and Regulations

- The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary.
- The meeting of the Board shall be held at the call of its chairman or at such times as a quorum of the Board may determine.
- The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
- The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
- All meetings of the Board shall be open to the public. A favorable vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to

decide in favor of the applicant on any matter upon which the Board is required to pass.

29-7 Appeal to the Board of Zoning Appeals

- An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the Zoning Administrator.
- Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise, than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

29-8 Appeal Procedure

- Appeals shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator, and a copy of the appeal mailed to the secretary of the Planning Commission. A third copy should be mailed to the individual, official, department, or agency concerned, if any.
- Appeals requiring an advertised public hearing shall be accompanied by cash payments to the Town in accordance with the Fee Schedule as set forth by Town Council by resolution.

29-9 Public Hearings

- The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within sixty (60) days. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3)

members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any proceedings and other official actions which shall be filed in the office of the Board and shall be public records. The chairman of the Board, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.

29-10 Court Petition

- Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.
- Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowances of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.
- The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

- Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.